

David N. Chandler, Sr. SBN 60780
David N. Chandler, Jr. SBN 235427
DAVID N. CHANDLER, p.c.
1747 Fourth Street
Santa Rosa, CA 95404
Telephone: (707) 528-4331

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CASE NO. 12-11743

CHAPTER 13

ROSA GONSALEZ PATLAN,

DEBTOR. /

ROSA GONSALEZ PATLAN,

A.P. No. 12-1129

Plaintiff,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION

Defendant. /

OPPOSITION TO MOTION TO DISMISS;
DECLARATIONS OF ROSA GONZALES PATLAN
AND DAVID N. CHANDLER; MEMORANDUM OF
POINTS AND AUTHORITIES

Date: September 7, 2012

Time: 9:00 a.m.

Place: 99 South E St.
Santa Rosa, CA

Rosa Gonzalez Patlan, Debtor herein, opposes the Motion of U. S.
Bank as follows:

BACKGROUND

Debtor and Jose Guadalupe Enriguez purchased the subject real
property on September 14, 1995. Title to said property was taken in
the name of Debtor, Jose Guadalupe Enriguez, Debtor's husband, and
Fernando Tapia Gonzalez, Debtor's nephew. The nephew was placed on
title for purposes of estate planning only. The purchase was seller

1 financed. Debtor paid the payments on the seller financed loan and
2 retired the secured obligation. Jose Guadalupe Enriguez conveyed
3 his undivided interest in the subject property to Debtor by Deed
4 recorded August 9, 1996. Fernando Tapia Gonzalez fraudulently caused
5 the property to be encumbered following payoff of the seller financed
6 obligation, by procuring a loan from a financial institution and
7 obtaining a forged signature on the Deed of Trust purporting to be
8 that of Debtor. The signature was notarized and the Deed of Trust
9 recorded on July 19, 2005.

10 Debtor had no knowledge of the said Deed of Trust. Payments on
11 the note made were made by Fernando Tapia Gonzalez without the
12 knowledge of Debtor. Debtor maintained the taxes and insurance
13 current. Debtor received none of the proceeds of the loan and was
14 completely unaware of said loan.

15 On March 20, 2007, Fernando Tapia Gonzalez caused the existing
16 loan to be refinanced and once again, purported to secure the
17 refinanced loan with the subject property by presenting a forged
18 signature purporting to be that of the Debtor. Debtor had no
19 knowledge of the loan, received no benefit from the proceeds and paid
20 no payments on the loan.

21 On January 20, 2010, Fernando Tapia Gonzalez, again without the
22 knowledge of the Debtor, entered into a loan modification with the
23 lender, U.S. Bank's predecessor. Fernando Tapia Gonzalez, employing
24 yet another forged signature of the Debtor, and together with
25 officers of the lender, executed a Modified Deed of Trust, purporting
26 to modify the terms of the previously forged Deed of Trust recorded
27 and purporting to encumber the subject property.

28 Upon discovery of the forged conveyances, Debtor notified the

1 Sonoma County Sheriff. The Sheriff employed experts who determined
2 the three signatures were not genuine and obviously made with three
3 different hands. Not one of the three thumb prints contained in the
4 notary books were those of the Debtor. Fernando Tapia Gonzalez was
5 prosecuted and incarcerated.

6 STATEMENT OF THE CASE

7 U.S. Bank's predecessor brought SVC 249648 in Sonoma County
8 Superior Court on May 11, 2011. By way of the complaint, such bank
9 is attempting to have a Superior Court declare that the lien attaches
10 to the entire fee interest of the subject property and to judicially
11 foreclose same. The Honorable Mark Tansil, Judge of the Superior
12 Court, following the conviction, requested that the bank refrain from
13 foreclosure. The bank has declined to acknowledge that one, or any
14 of the three Deeds of Trust were products of a convicted forger and
15 insisted upon conducting a judicial foreclosure against the subject
16 property.

17 Debtor is employed as a housekeeper at Angelica Center. She has
18 limited income and has been unable to retain counsel, unable to post
19 any bond, and unable to persuade the bank to exercise any degree of
20 reason, rationality or discretion. Prior to the bank's attempt to
21 obtain judgment for judicial foreclosure, the within case was filed
22 on a pro bono basis. The Debtor does not speak English.

23 The Debtor's Schedules are accurate and reflect the information
24 which was available. Unsecured creditors are correctly scheduled.

25 ISSUES

- 26 1. Whether the petition was filed in good faith.
27 2. Whether the complaint filed in the Adversary Proceeding is
28 a core proceeding.

DISCUSSION

A. The petition was filed in good faith inasmuch as U.S. Bank was attempting to foreclose by judicial foreclosure in which the Debtor has a good, just, and absolute defense.

(1). The Bank would have this Court believe that it was not taking advantage of the Debtor before the Superior Court. The Bank is aware that the Debtor speaks little English, is employed as a housekeeper and is poor. The Bank is aware that all three Deeds of Trust contain forged signatures of the Debtor and are attempting to take advantage of the disadvantaged. The conduct of the Bank and counsel is not only wrong but patently repugnant.

(2). Authority cited by the Bank is inapplicable.

a. Determination of bad faith in the filing of a petition is determined on a case by case basis. In re Goeb, 675 F.2d 1386 (9th Cir. 1982).

b. In re Drocco, 2010 WL 703113 (Bkcty. N.D. Cal.2010) is unpublished and inapplicable. This is a relief from stay case granted where judgment by stipulation had been entered in a Superior court, an attempt to circumvent the judgment in a second Superior Court case. The Petition had been filed to propose a plan to restructure the terms of the judgment.

c. In re Chinichian, 784 F.2d 1440 (9th Cir. 1986) involved a specific performance trial which was stayed and the petition was held to have been filed in bad faith. Here, the underlying action is to judicially foreclose a proven forged security interest over the request of a Superior Court judicial officer.

d. In re Eisen, 14 F3d 469 (9th Cir. 1994) involved a Debtor who had sold real property and sought to obviate a specific

1 performance case filed in Superior court by filing Chapter 13.
2 Debtor, contending the property had been foreclosed and he was just
3 living there, sought to reject the contract. The petition was
4 dismissed and the specific performance case was set for trial. On
5 the eve of trial, a 2nd petition was filed but this time acknowledging
6 ownership but still attempting to reject the contract.

7 e. In re Dami, 172 B.R. 6 (Bkctcy. E.D. Pa. 1994) was a
8 dismissal of the fourth successive petition filed by the debtor in an
9 attempt to thwart collection of an unsecured claim.

10 f. In re St.Paul Self Storage Ltd. P'ship, 185 B.R. 580
11 (9th Cir. 1995), a Chapter 11 case, was filed by an entity with little
12 asset, no ongoing business and a pending state court suit in which
13 partial summary judgment had been granted, trial set and discovery
14 pending.

15 g. In re Silberkraus, 336 F.3d 864 (9th Cir. 2003) was a
16 Chapter 11 case converted to Chapter 7 after plan proponent failed to
17 amend plan to conform with Court's directive within set deadline.
18 The Debtor was engaged in pre-petition litigation which had nothing
19 to do with the decision to convert.

20 h. In re Mead, 2010 WL 6259982 (9th Cir. BAP), and an
21 unpublished decision, involved a debtor who zealously litigated in
22 the Superior Court over disposition of community assets and when
23 unsuccessful, filed a Chapter 13 petition and proposed to pay the
24 spouse a dividend of 4%. The BAP upheld dismissal on good faith
25 grounds.

26 (3). The Court should correctly look to the totality of the
27 circumstances. In re Goeb, 675 F.2d 1386 (9th Cir. 1982).

28 "Goeb established that, in this circuit, a good faith

1 determination in connection with Chapter 13 Plan confirmation cannot
2 be based on any single factor or feature of a proposed plan, to the
3 exclusion of review of all other relevant information. Importantly,
4 it is of no moment that a single factor may be indicative of bad
5 faith, or that a specific plan feature is not consistent with the
6 spirit of Chapter 13 or may indicate manipulation of the Bankruptcy
7 Code. Factors indicating good and bad faith may not be considered in
8 isolation, but always be weighted against the totality of the
9 circumstances in each case." In re Lepe, 470 B.R. 851 (9th Cir. BAP
10 2012).

11 (4). The amount of the unsecured claims is not particularly
12 relevant. In re Lepe, supra., the Debtor's scheduled unsecured debt
13 was \$549. Neither balance sheet insolvency nor inability to pay
14 one's debts is a prerequisite to filing a petition. See, In re Lepe,
15 supra. The totality of the circumstances clearly militates in favor
16 of the Debtor's good faith. The factors set forth by the Ninth
17 Circuit (In re Goeb, supra.) are:

18 (1) Whether the Debtor has misrepresented the facts,
19 manipulated the Code, or filed in an inequitable manner;

20 (2) Debtor's history of filing petitions and dismissals;

21 (3) Whether Debtor intended only to defeat state court
22 litigation; and

23 (4) Egregious behavior of the Debtor.

24 The Debtor has honestly and accurately set forth her assets,
25 income and liabilities. Each potential unsecured creditor has been
26 provided an opportunity to file a claim within the bar date. One
27 such creditor has indicated her intention to do so. The Code
28 specifically provides for determination and discharge of unsecured

1 indebtedness, determination of nature, extent and validity of liens
2 and cure of defaulted obligations. Debtor proposes to do exactly
3 that.

4 This Debtor has not previously sought relief and attempted to
5 avoid seeking relief in equitably resolving the effect of the forged
6 instruments which the moving party proposes to enforce by default.

7 Debtor does not intend to defeat the Superior court litigation,
8 but specifically does intend to defeat the judicial foreclosure.
9 Judgment has not been entered and would have been entered by default
10 had Debtor not wisely filed the petition. The moving party has
11 entered a default and proposes to impose an inequitable result on the
12 Debtor by taking her property by use of a default obtained knowing of
13 the forged documents upon which it relies. Debtor proposes to
14 determine the extent of the lien on her property and to liquidate the
15 property to the extent necessary to pay whatever claim is secured by
16 the property. Certainly the moving party will not have the audacity
17 to assert a deficiency against the Debtor based upon the forged
18 instruments?

19 Debtor barely speaks english. She lives at or below poverty
20 level. She is attempting, just like thousands of other homeowners,
21 to hold on to her property. The egregious behavior is in the moving
22 party's insistence that the forged documents create a lien on her
23 interests in the property and that they will take advantage of this
24 elderly person to take her home from her by default.

25 B. The Claims set forth in the Adversary Proceeding are core
26 and within the specific jurisdiction of this Court.

27 1. 28 U.S.C. 157 sets forth the type of proceeding which
28 are core. It is settled that a proceeding to determine the nature,

1 extent and validity of a lien on property of the estate is a core
2 proceeding.

3 2. Congress included proceedings to determine the
4 validity, nature and extent of liens on property of the estate in the
5 list of matters which it intended to be included as "core. See. In
6 re Jones, 2006 WL 6810992 (9th Cir. BAP 2006) *Unpublished*.

7 3. Whether a proceeding is core is not a matter of
8 whether the sole basis for determination is state law. In re
9 Bergem, 81 B.R. 994 (Bkcty. N.D. Ca. 1988).

10 4. The claims set forth in the Adversary Proceeding are
11 core and specifically subject to this Court's jurisdiction. Simply
12 because the moving party has obtained a default in a judicial
13 foreclosure proceeding in the Superior court does not determine any
14 of the respective rights of the parties.

15 WHEREFORE, Debtor submits that the Motion of U.S. Bank be denied
16 and for such other and further relief as the Court deems just and
17 proper.

18 Dated: 8/15/12

Respectfully submitted,

DAVID N. CHANDLER, p.c.

21 By: /s/ David N. Chandler

David N. Chandler

Attorney for Debtor

23 DECLARATION OF DAVID N. CHANDLER

24 I, David N. Chandler, declare and say:

25 1. That if called as a witness, I am competent to testify to
26 the within matters from my own knowledge.

27 2. That attached to the Declaration of Dana M. Andreoli as
28 Exhibit A is a true and correct copy of the Complaint filed in SVC

1 249648, Sonoma County Superior Court. The Complaint sets forth
2 Causes of Action:

3 (1) Declaration that the Deed of Trust is enforceable
4 against property of the Debtor;

5 (2) Equitable Subrogation of the Deed of Trust against
6 property of the Debtor and judicial foreclosure;

7 (3) Fraud (not as to Debtor);

8 (4) Conversion (not as to Debtor);

9 (5) Equitable Indemnity (not as to Debtor);

10 (6) Implied Contractual Indemnity (not as to Debtor).

11 3. Attached hereto as Exhibit B is a true and correct copy of
12 communication to the moving party by the Honorable Mark Tansil, Judge
13 of the Superior Court.

14 4. Debtor contacted our office initially on or about May 25,
15 2012. After investigation of the status of the Superior Court
16 judicial foreclosure case, it was apparent that the only responsible
17 course was to petition for relief pursuant to Chapter 13 of Title 11.
18 As can be seen from Schedule I, the Debtor does not have the
19 resources to retain counsel under any traditional retainer.

20 5. Debtor does not speak English, however, she does better
21 with English than I do with Español.

22 6. I have reviewed the Sheriff reports and experts analysis of
23 the fingerprints in the notary records. The perpetrator of the
24 forgeries has been prosecuted and is currently serving time. There
25 can be no doubt from the investigative reports that the documents are
26 forged.

27 7. I have reviewed the forged signatures which are each
28 attached to the complaint filed in the Adversary Proceeding. The

1 fact that three different persons signed each one of the documents is
2 questioned is undeniable. The forger could not spell the name
3 correctly.

4 8. The Debtor has scheduled potential claims from Irma Cordova
5 and others. I have personally spoken with Ms. Cordova and she has
6 confirmed that there is a balance although she could not tell me
7 precisely the amount as, knowing the financial circumstances of the
8 Debtor, she did not bother to send a final invoice.

9 Executed under penalty of perjury this 15th day of August, 2012
10 at Santa Rosa, California.

11 /s/David N. Chandler
12 David N. Chandler
13 Attorney for Debtor

14 DECLARATION OF ROSA GONSALEZ PATLAN

15 I, Rosa Gonzalez Patlan, declare and say:

16 1. That I am competent to testify to the within matters from
17 my own knowledge.

18 2. That I am 65 years old.

19 3. I am employed as a housekeeper by Angelica Center. My
20 wages are my sole source of support.

21 4. I purchased the real property located at 622 Todd Rd.,
22 Santa Rosa, CA on 9/14/95. The purchase was financed by a seller
23 note which was paid off by me. I took title to the property as co-
24 tenants with Jose Guadalupe Enriquez and Fernando Tapia Gonzalez.
25 Enriquez deeded to me his interest in the property by Deed recorded
26 8/9/96.

27 5. Fernando Tapia Gonzalez is my nephew. He was placed on
28 title for the purposes of estate planning and owned no interest in

1 the subject property.

2 6. Fernando Tapia Gonzalez, unbeknownst to me, caused a Deed
3 of Trust to be recorded in favor of Ameriquest on July 13, 2005. The
4 Deed of Trust contains a signature purporting to be mine but is a
5 forgery. I received none of the proceeds and paid none of the
6 payments.

7 7. Fernando Tapia Gonzalez, unbeknownst to me, caused another
8 Deed of Trust to be recorded in favor of WAMU on March 20, 2007. The
9 Deed of Trust contains a signature purporting to be mine but is a
10 forgery. I received none of the proceeds and paid none of the
11 payments.

12 8. Fernando Tapia Gonzalez, unbeknownst to me, caused a
13 Modified Deed of Trust to be recorded in favor of WAMU on January 28,
14 2010. The Deed of Trust contains a signature purporting to be mine
15 but is a forgery. I received none of the proceeds and paid none of
16 the payments.

17 9. Since I have owned the subject property, I have paid all of
18 the real property taxes and maintained the insurance.

19 10. I had no knowledge of the forged instruments and did not
20 authorize anyone to affix my signature to any of the said three Deed
21 of Trust.

22 11. I have consulted with David N. Chandler and provided to
23 him, through an interpreter, all of the information which he
24 requested. To my knowledge and to the best of my understanding, the
25 information provided is true, complete and accurate.

26 12. I owe Irma Cordova some unpaid fees but have yet to be
27 presented with an invoice. I also owe Jose Guadalupe Enriquez
28 something for his interest in the property, but I am not certain what

1 the amount is. I anticipate that both of these creditors will file
2 a claim prior to the claims bar date.

3 13. After consulting with Mr. Chandler, and following advice of
4 counsel, I authorized filing the petition. My purpose was to protect
5 my home from foreclosure and protect myself from an unfair and unjust
6 judgment which U.S. Bank proposed to have entered based upon a
7 default.

8 14. I have never filed a petition under Title 11 previously.

9 15. The plan I have authorized to be filed with the Court
10 provides for liquidation of assets through litigation of disputed
11 claims and sale, if necessary, of my home.

12 16. I am unable to afford to retain counsel. Mr. Chandler has
13 agreed to take my case and determine at a later date if fees are
14 recoverable from third party claims.

15 Executed under penalty of perjury this 10th day of August, 2012
16 at Santa Rosa, California.

17
18 /s/Rosa Gonsalez Patlan
Rosa Gonsalez Patlan, Debtor

EXHIBIT B

SUPERIOR COURT OF CALIFORNIA
County of Sonoma

COURT ORDER



TO: JP Morgan Chase Bank (Formerly Washington Mutual)
(Legal Department)
2245 Mendocino Avenue
Santa Rosa, CA 95403
(Reference Wa/Mu Loan # 9083013411446)

APPLICANT: Detective Michael Morarity, Sonoma County Sheriff's Department, hereinafter "Applicant"

ORDER: Proof by declaration under penalty of perjury having been made to me on this date by the Applicant. Provider is ordered and authorized to do the following:

1) You are ordered to suspend the foreclosure proceedings in connection with JP Morgan Chase Bank, (Formerly Washington Mutual Bank) loan # 9083013411446, for the residential address of 622 Todd Road, Santa Rosa, CA, 95403. This order is a (sixty day) suspension which will allow the Sonoma County Sheriff's Department time to continue an identity theft investigation on this loan.

SEALING ORDER: Pending further orders of the court, it is further ordered that this court order and all accompanying documents and records shall not become a public record and shall be sealed and delivered to the custody of the Sonoma County Sheriff's Department Records Division.

Grounds for sealing: ☐ Informant protection (Evid. Code § 1041) ☐ Official information (Evide. Code § 1040)

9/23/09 2:35 p.m.
Date and time issued

Bark Tarnish
Judge of the Superior Court

Application for Court Order

The matter having come before the Superior Court pursuant to an attached affidavit of probable cause in furtherance of a criminal investigation conducted by **Detective Michael Morarity** of the Sonoma County Sheriff's Department.

Declaration: I declare under penalty of perjury that the forgoing affidavit of probable cause is true and correct:

9-23-09
Date

[Signature]
Applicant